IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8103 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MAHALAXMI TEXTILE MILLS - Petitioner
Versus
MANJULABEN SHANTILAL JOSHI WD/O. SHANTILAL M JOSHI - Respondent

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Appearance :
MR DEVANG NANAVATI FOR NANAVATI & NANAVATI for Petitioner.
MR MEHUL S SHAH for Respondent.
MR SURESH M SHAH for Respondent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 14/08/2007
ORAL JUDGMENT

1. The petitioner – original defendant has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the order passed by the learned 2nd Joint Civil Judge (S.D.), Bhavnagar dated 02.06.2003 below Exh.13/15 in Regular Darkhast No. 08 of 1994 whereby the earlier order for issuance of Jungam Warrant passed on 11.03.1994 under Order 21, Rule 30 of CPC was revived.

2. It is the case of the petitioner that the husband of the respondent, namely, Late Shri Shantilal Maganlal Joshi had entered into a contract with the petitioner Company for lifting burnt coal and coal ash from the Bhavnagar unit of NTC. For the completion of the said contract within the stipulated time, the deceased Shantilal had deposited Rs.1,07,000/- on 10.05.1981 as security deposit with the Bhavnagar unit of NTC. On 15.04.1983, Shri Shantilal Joshi passed away. Since the financial condition of the legal heir was poor, they have time and again approached the Management of the Bhavnagar

unit for refund of the security deposit. It is the say of the petitioner that since the deceased Shantilal Joshi was unable to complete the work of lifting the burnt coal and coal ash and had worked only for nine months, the Management had to award the remaining work to the other Contractor by paying higher charges to him. The Management has, therefore, forfeited the security deposit of Shantilal Joshi.

3. Since the Management of Bhavnagar unit had not refunded the security deposit to the respondent, she had filed a Summary Suit No. 02 of 1992 in the Civil Court (S.D.), Bhavnagar which was decreed exparte on 30.10.1993 and the Civil Court directed the petitioner to pay Rs.2,67,500/- with further interest of 18% and cost of the suit to the respondent. Thereafter on 21.1.1994, the respondent filed Execution Proceeding No. 8 of 1994 against the petitioner for recovery of the decretal amount. The petitioner filed its objection inter alia contending that the petitioner is a unit of NTC (Gujarat) Limited which has already been declared as “sick industrial undertaking” by BIFR and hence, protection under Section 22 of SICA is available to the petitioner

and hence, the execution proceedings cannot be proceeded further and is required to be stayed. The Executing Court, therefore, stayed further proceedings of Darkhast application filed by the respondent till further order. On 19.02.2002, BIFR has sanctioned the revival scheme of NTC (Gujarat) Limited and as per the said scheme, revival process will continue in a phased manner for a period of 8 years i.e. upto the year 2010. Under these circumstances, as per the provisions under Section 22 of SICA, the protection would continue till the revival scheme is fully implemented i.e. till the year 2010.

4. Mr. Devang Nanavati, learned advocate for the petitioner has submitted that the learned Executing Court has wrongly presumed that as BIFR has finally sanctioned the revival scheme of NTC, no proceedings are pending before the BIFR and hence, the execution proceedings should be proceeded further against the petitioner Company. The respondent, therefore, filed an application on 29.06.2002 before the Executing Court to proceed further with the execution proceedings. Again the objections were raised by the petitioner on

17.10.2002. The Court, thereafter, by the impugned order dated 02.06.2003 issued Jungam warrant against the petitioner.

5. It is this order which is under challenge in the present petition.

6. Mr. Mehul S. Shah, learned advocate appearing for the respondent has submitted that looking to the financial condition of the respondent and smallness of the amount, the petitioner should be directed to pay the said amount.

7. Having heard learned advocates appearing for the respective parties and having gone through the provisions of the SICA, the protection granted under Section 22 equally applies to the period during which the scheme is under implementation. The period is upto 2010 and hence, the petitioner company cannot be compelled to pay the decretal amount to the respondent till April 2010. Impugned order dated 02.06.2003 is, therefore, quashed and set aside. However, looking to the financial condition of the respondent and the smallness of the amount, it is open for the respondent to

make an application to the petitioner Company within a period of two weeks from today requesting the petitioner Company to release the said amount. On receipt of such application from the respondent, the petitioner Company may consider sympathetically the same and if any surplus fund is available, the same may be given to the respondent only on humanitarian ground and not as a matter of right. Subject to this, the execution proceedings are kept in abeyance till the period of implementation of scheme is over i.e. April, 2010.

8. Subject to the aforesaid observation and direction, the petition is accordingly disposed of. Rule made absolute to the aforesaid extent.

[K. A. PUJ, J.]

Savariya